

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
June 9, 2009 Session

**TENNESSEE RIVER COLLECTION YACHT SALES, LLC, ET AL. v.
P.F.C., INC. dba STINGRAY BOAT COMPANY**

**Appeal from the Chancery Court for Hamilton County
No. 08-0275 W. Frank Brown, III, Chancellor**

No. E2008-02502-COA-R3-CV - FILED SEPTEMBER 29, 2009

This case arises out of the termination of a dealer agreement (“the Agreement”), pursuant to which Tennessee River Collection Yacht Sales, LLC, and TRC Watersports Center, LLC (collectively “the Dealers”) were authorized to sell recreational boats manufactured by P.F.C., Inc. dba Stingray Boat Company (“the Supplier”), a South Carolina corporation. The Supplier terminated the Agreement citing the Dealers’ failure to purchase the current product models. The termination was also based upon the recommendation of the Supplier’s representative following an on-site visit to the Dealers. The Dealers filed suit alleging that the Supplier’s refusal to repurchase the Dealers’ remaining inventory of Stingray boats was a violation of statutory law governing the “Repurchase of Terminated Franchise Inventory,” the Code Commission-supplied label for Tenn. Code Ann. §§ 47-25-1301 - 14 (2001) (“the Repurchase Act” or “the Act”). The Supplier filed a motion to dismiss for lack of jurisdiction, asserting that under a governing law and forum selection clause contained in the Agreement, the action had to be brought in South Carolina, not Tennessee. The trial court agreed and dismissed the complaint without prejudice. The Dealers appeal. We affirm.

**Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Chancery Court
Affirmed; Case Remanded**

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and JOHN W. MCCLARTY, J., joined.

Christopher T. Varner and Joseph W. Dickson, Chattanooga, Tennessee, for the appellants, Tennessee River Collection Yacht Sales, LLC, and TRC Watersports Center, LLC.

John W. Baker, Jr., and Brent A. Morris, Knoxville, Tennessee, for the appellee, P.F.C., Inc., dba Stingray Boat Company.

OPINION

I.

The Dealers are Tennessee-based companies. The Supplier is a South Carolina-based boat manufacturer. The parties signed the Agreement in 2006 under which the Dealers became retail sellers of the Supplier's "Stingray" boats for a specified geographic area in Tennessee. The Agreement contains a provision entitled "Governing Law and Forum Selection" which states as follows:

Dealer acknowledges and agrees that the laws of the State of South Carolina shall govern the rights and obligations of the parties herein, and [the Supplier] and the Dealer agree that jurisdiction and venue is proper in the Court of Common Pleas, Florence County, South Carolina, or the Federal District Court for the District of South Carolina for the resolution of any disputes arising out of this Agreement.

The Dealers purchased an inventory of Stingray boats from the Supplier in 2007, but did not purchase the 2008 models. The Supplier terminated the Agreement in late 2007 citing a previous "onsite visit" of the Dealership and the Dealers' failure to purchase the 2008 models. The Supplier refused to repurchase the Dealers' inventory.

The Dealers filed a complaint in this case alleging that the Supplier had violated the Repurchase Act. Instead of answering the complaint, the Supplier filed a motion to dismiss, noting its special appearance for a challenge based on jurisdiction. As grounds for the motion, the Supplier cited and relied upon the forum selection clause in the Agreement. The Dealers opposed the motion, arguing that the forum selection clause was void as a violation of the public policy reflected in the Act. Specifically, the Dealers argued that the forum selection clause was negated by the following language in the Repurchase Act: "Any contractual term restricting the procedural or substantive rights of a retailer under this part, including a choice of law or choice of forum clause, is void." Tenn. Code Ann. § 47-25-1312.

The trial court found that the statutory protection does not apply because the Dealers "are not 'retailers' pursuant to Tenn. Code Ann. § 47-25-1301(4), and therefore the provisions of the Repurchase Act in its entirety are inapplicable in the case *sub judice*." (Emphasis in original.) The trial court cited its own more-thorough analysis of the Repurchase Act in another case brought by the Dealers against Rinker Boat Company, LLC, where the trial court "held that [the Dealers], as commercial retailers of personal recreational watercraft, are not 'retailers' under the Repurchase Act. The Act covers only retailers of 'farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, attachments or repair parts.'" Tenn. Code Ann. § 47-25-1301(4). The trial court granted the motion to dismiss in the instant case, observing that the Dealers had raised no other reason to invalidate the forum selection clause of the Agreement. This timely appeal followed.

II.

The Dealers present two issues for our consideration that we restate as follows:

1. Whether the trial court erred in holding that the Repurchase Act does not apply in the present case because the Dealers are not “retailers” as defined in the Act.
2. Whether the trial court erred in granting the Supplier’s motion to dismiss the Dealers’ complaint.

III.

A trial court’s conclusions of law are reviewed *de novo* upon the record with no presumption of correctness. *Perrin v. Gaylord Entm't Co.*, 120 S.W.3d 823, 826 (Tenn. 2003); *Ganzevoort v. Russell*, 949 S.W.2d 293, 296 (Tenn. 1997). The interpretation of a statute and its application to undisputed facts involve questions of law. *U.S. Bank, N.A. v. Tenn. Farmers Mut. Ins. Co.*, 277 S.W.3d 381, 386 (Tenn. 2009); *Waldschmidt v. Reassure Am. Life Ins. Co.*, 271 S.W.3d 173, 175 (Tenn. 2008).

Recently, the Supreme Court summarized the law applicable to questions of statutory construction. In *Waters v. Farr*, __ S.W.3d __, 2009 WL 2214185 (Tenn. filed July 24, 2009)¹, the High Court said:

When called upon to construe a statute, we must first ascertain and then give full effect to the General Assembly's intent and purpose. Our chief concern is to carry out the legislature's intent without either broadening or restricting the statute beyond its intended scope. Every word in a statute "is presumed to have meaning and purpose, and should be given full effect if so doing does not violate the obvious intention of the Legislature." When the statutory language is clear and unambiguous, we apply its plain meaning without complicating the task. When a statute is ambiguous, however, we may reference the broader statutory scheme, the history of the legislation, or other sources to discern its meaning. We presume that the General Assembly was aware of its prior enactments and knew the state of the law at the time it passed the legislation.

2009 WL 2214185 at *4) (internal citations omitted). All rules of construction are aides that serve the cardinal rule of determining and giving effect to legislative intent. *Browder v. Morris*, 975 S.W.2d 308, 311 (Tenn. 1998). Among these aides or other sources is the doctrine of *nonscitur a sociis* which instructs that an undefined term is interpreted within the context of accompanying words to avoid overly expanding the scope of a statute. *Parker v. Metropolitan Life Ins. Co.*, 121 F.3d 1006, 1014 (6th Cir. 1997) *en banc*. Stated a simpler way, without the Latin, “words [in a statute] are known by the company they keep.” *State v. Medicine Bird Black Bear White Eagle*, 63 S.W.3d 734, 754 (Tenn. Ct. App. 2001). Words that have a specialized or technical meaning,

¹This opinion was filed on July 24, 2009; only the Westlaw citation is currently available.

when used in a statute, are construed to carry the technical meaning unless the context requires otherwise. *Cordis Corp. v. Taylor*, 762 S.W.2d 138, 140 (Tenn. 1988).

IV.

A.

The specific question of statutory construction before us is whether the Dealers, as retail sellers of recreational boats, fall within the statutory definition of retailer so that an obligation arises under the statute for the Supplier to repurchase inventory. The term “ ‘Retailer’ means any person, firm or corporation engaged in the business of selling and retailing farm implements and machinery, construction, utility and industrial equipment, outdoor power equipment, attachments or repair parts and shall not include retailers of petroleum products.” Tenn. Code Ann. § 47-25-1301 (4). The term “inventory” is also a defined term. “ ‘Inventory’ means farm implements and machinery, construction, utility and industrial equipment, consumer products, outdoor power equipment, attachments and repair parts.” If The Dealers are not *retailers*, then no possible protection is afforded by the statute and the trial court must be affirmed. If they are retailers, the Act might² protect the Dealers procedurally by voiding the forum selection and substantively pursuant to the following statutory provision:

Whenever any retailer enters into an agreement, evidenced by a written or oral contract, with a supplier wherein the retailer agrees to maintain an inventory of parts and to provide service and the contract is terminated, then the Supplier shall repurchase the inventory as provided in this part.

Tenn. Code Ann. § 47-25-1303. The Repurchase Act establishes the price to be paid for categories of inventory and, in the event a supplier refuses, the retailer can recover 100% of the price of the inventory plus attorney fees and costs. Tenn. Code Ann. §§ 47-25-1305, 1308.

A retailer bears the burden “of establishing that it falls within the protective purview of the statute.” *Middle Tenn. Assoc. v. Leeville Motors, Inc.*, 803 S.W.2d 206, 210 n.4 (Tenn. 1991). The Dealers concede, as they must, that recreational boats are not “farm implements and machinery” nor are they “utility and industrial equipment.” Thus, to succeed, the Dealers must show us that recreational boats constitute “outdoor power equipment.” To date, no case that we can find has interpreted the term “outdoor power equipment” under the Repurchase Act or a parallel provision in a sister state.

We begin our analysis with the plain language of the statute. The Dealers argue that since boats are obviously “used outdoors and are powered and propelled by outboard power engines,” they fall within the plain language of the statute. The Supplier argues that “ ‘outdoor power equipment’,

²Since the case is before us after dismissal as a matter of law, we are taking the facts in the best light alleged. Nothing expressed herein should be taken as a comment on the merits of the case or lack thereof.

given its plain meaning, does not encapsulate recreational motorboats.” Neither argument is especially helpful, other than to demonstrate that the statutory language is susceptible to a broad interpretation which focuses on the words “outdoor” and “power” as well as a narrow interpretation which focuses on the word “equipment.” Given that the definition of inventory includes “consumer products” we cannot say that either interpretation is beyond the realm of reason. Thus, we conclude that the statutory language is ambiguous and that we must resort to aides of construction to ascertain its meaning. See *Memphis Housing Authority v. Thompson*, 38 S.W.3d 504, 512 (Tenn. 2001) (if language is susceptible to more than one reasonable interpretation it is ambiguous).

The current definition of “retailer” and “inventory” is slightly broader than as originally enacted. The original 1977 version of the Repurchase Act was discussed in *Leeville Motors*, 803. S.W.2d at 206. To our knowledge and our best research *Leeville Motors* is the only Tennessee state court case that has addressed the terminology in the Repurchase Act.³ The Supreme Court held that the agreement at issue in that case was not a franchise agreement so as to fall within the Repurchase Act, but not before commenting on the purpose and scope of the Act.

Two of the terms used in this repurchase provision are contained in the preceding definitional section, T.C.A. § 47-25-1301. The language of that section makes it clear that the legislature’s purpose in enacting the statute was not to protect franchisees in general, but to protect farm equipment Dealers in particular. Hence, subsection (3) of § 47-25-1301 defines “inventory” as “farm implements, machinery, utility and industrial equipment, attachments, and repair parts.” At the time of this litigation, subsection (5) defined a “retailer” to mean “any person, firm, or corporation engaged in the business of selling and retailing farm implements, machinery, utility and industrial equipment, attachments, or repair parts, but does not include . . . retailers of yard and garden equipment not primarily engaged in the farm equipment business.”

³We are aware of several federal court cases that have decided issues under the Act, but none are especially helpful. In *Power & Telephone Supply Co. v. Harmonic, Inc.*, 268 F.Supp.2d 981 (W.D. Tenn. 2003), the court held that the Act applied to a dispute between a the Supplier and a distributor of fiber optic cable, but noted that the parties apparently agreed the defendant fit withing the statutory definition of the Supplier. *Id.* at 989. From there it was not a far leap to find that fiber optic cable fit within the definition of inventory that included “industrial equipment” or “utility equipment.” *Id.* at 990. In *Freightliner of Knoxville, Inc. v. DaimlerChrysler Vans, LLC*, 438 F.Supp.2d 869 (E.D.Tenn. 2006), the court held that vans supplied by the defendant, even though clearly capable of being used as “industrial equipment,” did not fall within the protection of the Repurchase Act. *Id.* at 889. The trial court’s holding was disapproved as a “sweeping interpretation” without “guidance from the Tennessee legislature or courts,” but partially affirmed on other grounds in *Freightliner of Knoxville, Inc. v. DaimlerChrysler Vans, LLC*, 484 F.3d 865, 869 (6th. Cir. 2007). Finally, in *Nacco Materials Handling Group, Inc. v. Toyota Materials Handling USA, Inc.*, 366 F.Supp.2d 597 (W.D.Tenn. 2004), the court applied the Repurchase Act to a the Supplier and retailer of forklifts, however, the parties agreed that the Act applied to their dispute. *Id.* at 605 n.4.

Id. at 209 (omission in original). The dispute in *Leeville Motors* was between a the supplier of lawn and garden equipment and a retailer dealer with whom the supplier had a distribution agreement. The retailer sold, in addition to the garden equipment, trucks and tractors. *Id.* at 208.

In 1987, the definition of “retailer” was amended to include sellers of “motorcycles . . . or repair parts” but continued to exclude “retailers of yard and garden equipment not primarily engaged in the farm equipment business.” 1987 Tenn. Pub. Acts, ch. 99. In 1997, the exclusion of yard and garden equipment retailers was deleted in favor of the following added language:

Retailer also includes any retail lawn and garden dealer, whose primary business is the sale of equipment and servicing of such equipment and the on site sale of parts and warranty repairs, if such sales and services constitute at least eighty percent (80%) of the dealer’s annual sales at any one (1) retail location.

1997 Tenn. Pub. Acts ch. 272. The present version of the Repurchase Act was achieved by repealing the previous legislation in its entirety and substituting the language now found at §§ 47-25-1301 through 47-25-1314. 1999 Tenn. Pub. Acts, ch. 193. The legislative history of the 1999 version indicates that it was introduced to “update the statute on the transactions between retail equipment dealers and their suppliers.” Senate Bill 1026, Introductory Comments, Senator Burks, April 20, 1999. The impetus was a constituent “that represents a trade association that deals in industrial and agricultural equipment.” *Id.*

While we must admit looking through a glass darkly, without the benefit of a crystal ball, we believe we can make some sense of the intended scope of the Act from its history. As discussed in *Leeville Motors*, this statutory scheme was enacted with a narrow purpose and a narrow target. Despite some expansions and some contractions, the scope has consistently been limited to sellers of farm equipment, industrial equipment, and one or two other categories that have been arguably analogous to farm and industrial equipment. While it can be argued that motorcycles are an aberration, it can also, just as persuasively, be argued that by removing motorcycle dealers from the Act the legislature returned to the straight and narrow path it originally charted. The 1997 amendment, for the first time, included “lawn and garden dealer[s] . . . whose primary business is the sale of equipment . . .” without any requirement that the sale be made by a dealer “primarily engaged in the farm equipment business.” In other words, the amendment included dealers who sold lawn mowers and chain saws and such to the general public. We acknowledge that there are obvious differences between a pure lawn and garden dealer and a pure farm equipment or industrial equipment dealer, but there are also obvious similarities. All these categories deal in tools to simplify or magnify man’s work. They are all used primarily for altering or maintaining man’s surroundings. It is likely that any dealer who meets the definition of retailer under any of these categories maintains an inventory that includes, though it may not be limited to, machines powered by an internal combustion engine which take power from the engine and apply it to the ground in a device that is not designed for transportation. If the term “outdoor power equipment” is interpreted as the rough equivalent of “lawn and garden . . . equipment” the current version is completely consistent with the history and evolution of the Act.

We also believe the term “outdoor power equipment” had an established technical meaning consistent with the above that was understood at the time the most recent version was enacted. Our research has not produced a case interpreting the term “outdoor power equipment” in the context of a similar statutory scheme, but several states include a definition in their various statutes. Fla. St. Ann. § 686.602 (11) (defining “outdoor power equipment” as “two-cycle and four-cycle gas, diesel, and electric engines and any other type of equipment used to maintain commercial, public and residential lawns and gardens or used in landscape, turf, golf course, green nursery, or forestry or tree maintenance”); Iowa Code Ann. § 322 F.1(10) (“means equipment using small motors or engines, if the equipment is used principally for outside service, including but not limited to aerators, augers, blowers, brush clearers, brush cutters, chain saws, dethatchers, edgers, hedge trimmers, lawn mowers, pole saws, power rakes, snowblowers, and tillers”); Ohio Rev. Code Ann § 4517.01(JJ) (“garden and small utility tractors, walk-behind and riding mowers, chainsaws, and tillers”); S.D. Codified Laws § 37-5-16(1) (“including: light industrial lawn and garden equipment, handheld lawn and garden equipment, snow removal equipment, and small engines and other power sources that operate such equipment”); V.T.C.A. § 55.01 (9) (previously §19-01 (10)) (“machinery operated by an engine or electric power and used in the landscaping or cultivation of land for nonagriculture purposes [and] the term includes lawn and garden implements”). As early as 1992, this court used the term to describe the relationship between Mr. Pullen, who “started his own business selling chain saws and other outdoor power equipment,” and Textron, Inc., “a manufacturer of chain saws and other outdoor power equipment.” *Pullen v. Textron, Inc.*, 845 S.W.2d 777, 778 (Tenn. Ct. App. 1992).

Despite the fact that we did not find a case in any jurisdiction directly on point, we found over 90 cases that use the term “outdoor power equipment” in a context consistent with a lawn and garden application and none consistent with a recreational motor boat. We will list only a few cases that illustrate the point, but note that our research can be easily replicated. *Deere & Co. v. MTD Holdings*, 70 U.S.P.Q.2d. 1009, 2004 WL 324890 at *18 (S.D.N.Y. Feb. 19, 2004) (for many years defendant had been one of plaintiff’s “principal competitors in the market for lawn and garden tractors, walk-behind mowers and other outdoor power equipment”); *Kanematsu USA, Inc. v. U.S.*, 185 F. Supp. 2d 1364, 1369 n.13 (U.S.C.I.T. 2002) (witness who had worked for major companies in the lawn and garden business and started his own line of commercial mowers was recognized as an expert in the outdoor power equipment industry); *In re Bonds Distributing Co., Inc.*, 2000 WL 33673768 at *1 (Br.M.D.N.C. March 31, 2000) (“The primary business of the Debtor involved the operation of a wholesale outlet for small engine parts for outdoor power equipment such as chain saws, lawnmowers, edgers, etc.”); *Smith v. Garden Way, Inc.*, 821 F.Supp 1486, 1487 (N.D.Ga.) (*aff’d* 12 F.3d 220 (11th Cir. 1993) (table) (referencing American National Standards Institute (ANSI) specifications for “outdoor power equipment” as applicable to garden tillers); *Spangler v. Sears, Roebuck and Co.*, 759 F. Supp. 1337, 1338 (S.D. Ind. 1991) (referring to “Outdoor Power Equipment Institute, Inc.” as one of two leading industry organizations that set safety standards for lawn mowers); *United States v. Allis-Chalmers Mfg. Co.*, 1970 Trade Cases P. 73,341, 1970 WL 539 at *2 (E.D. Wis. Sept. 1, 1970) (using stipulated definition of the parties for “mobile outdoor power equipment” as “riding garden tractors, powered walking garden tractors, riding lawn mowers, powered walking lawn mowers, snow blowers, power tillers, and attachments and parts for all such equipment”).

One case merits brief discussion for its use of the term as well as the insight it provides as to the impetus in various states to enact this genre of statutes. See **McBud of Missouri, Inc. v. Siemens Energy & Automation, Inc.**, 68 F. Supp. 2d 1076 (E.D. Mo. 1999) (*aff'd* 210 F.3d 379 (8th Cir. 2000) (table) (interpreting Missouri Power Equipment Act, R.S. Mo. §§ 407.750 et. seq. (1994)). The dispute in **McBud** was between a manufacturer of heavy electrical components and a distributor of those components. When the manufacturer terminated its agreement with the distributor, the distributor sued under the Missouri Power Equipment Act. The Missouri statutes extended protection only to entities that dealt in “industrial, maintenance [or] construction power equipment.” *Id.* at 1080 (brackets in original). The court held that electrical components did not fit within the scope of the Power Equipment Act. *Id.* at 1086. The court considered extrinsic evidence of the meaning of the Act, including the affidavit of Missouri State Senator Jeff Schaeperkoetter and industry representatives who approached the senator to sponsor the legislation. Rather than cover farm, outdoor and industrial equipment under one statute as Tennessee has done, Senator Schaeperkoetter sponsored three separate bills which became three parallel statutory schemes. **McBud**, 68 F. Supp. 2d at 1082 n.2. One was the power equipment act in question. Another became R.S. Mo. §§ 407.838 et seq. “concerning farm equipment,” and the other became R.S. Mo. §§ 407.890 et seq. “concerning outdoor power equipment.” *Id.* The latter was characterized by the court as covering “dealers of . . . lawn and grounds care equipment . . .” *Id.* at 1082. The testimony was to the effect that the bills were drafted and presented to Senator Schaeperkoetter by people within the industry using terms “believed to have a commonly understood meaning among the equipment dealers . . . and the manufacturers whose products the dealers sold and repaired.” *Id.* at 1083.

Returning to the instant case, and with the above cases in mind, we believe the current version of the Act is simply an “update” of the previous version to use the term “outdoor power equipment” in preference to the previous terminology “lawn and garden . . . equipment.” We believe the language was understood to have a technical meaning in the industry. We hold that it was intended by the legislature to have the same meaning as its technical meaning in the industry. See **Cordis**, 762 S.W.2d at 140. Our conclusion is supported by the rule that words in a statute are known by the company they keep. **Medicine Bird**, 63 S.W.3d at 754. Farm equipment or industrial equipment is more likely to keep company with a piece of lawn and garden equipment than a boat. We believe this holding is in keeping with our duty of construing the statute to be consistent with the intended scope of the legislation and the targeted problem. **Chattanooga-Hamilton Hospital v. Bradley County**, 249 S.W.3d 361, 366 (Tenn. 2008). We believe the Texas statute contains a definition of “outdoor power equipment” that is most in keeping with the intention of our General Assembly in passing the 1999 version of the Act: “[M]achinery operated by an engine or electric power and used in landscaping or cultivation of land for nonagriculture purposes and includes lawn and garden implements.” This definition, of course, means that dealers of recreational boats are not protected by the Repurchase Act.

Two arguments made by the Dealers deserve only brief discussion. The Dealers argue that two changes in 1999 signal an intention that the Repurchase Act be construed broadly to include almost all retailers. One argument is that exclusion of only “retailers of petroleum products” is meant as an inclusion of all other retailers. This is a variation of the maxim that “the expression of one thing is the exclusion of another.” **Cellco Partnership v. Shelby County**, 172 S.W.3d 574, 597

(Tenn. Ct. App. 2005) (*quoting City of Knoxville v. Brown*, 260 S.W.2d 264, 268 (Tenn. 1953)). This rule has limitations. The maxim is said to be “a valuable servant, but a dangerous master to follow.” *Board of Park Comm’rs v. Nashville*, 185 S.W. 694, 699 (Tenn. 1916). Any force of logic that would otherwise be compelled by the maxim is dispelled by the presence of a “Petroleum Trade Practices Act” at Tenn. Code Ann. § 47-25-601 *et seq.* (2001) that addresses the relationship between “Producer,” “Distributor,” “Dealer,” and “Retailer” of petroleum products. *Id.* § 602. In the present case, exclusion of the Dealers of petroleum products apparently meant simply that they were dealt with elsewhere in the Code.

A second argument the Dealers make is that inclusion of “consumer products” within the definition of “inventory” broadens the scope of the Act. We disagree. We view the inclusion of consumer products within the definition of inventory as a recognition that retail sellers of outdoor power equipment will likely carry numerous items for direct sale to consumers. Obviously, we cannot interpret the Repurchase Act as being so broad as to apply to any seller of consumer products without regard to whether the seller also meets the definition of retailer. The scope of the Act is only broad enough to reach that subset of consumer products that are sold by retailers of outdoor power equipment, or the other categories of retailers. The argument has no merit.

B.

The only argument the Dealers make for avoiding the forum clause in the Agreement with the Supplier is that the Repurchase Act prevents its application. In fact, the Dealers concede that “[i]n Tennessee, contractual ‘choice of law’ provisions are generally valid.” *See Lamb v. MegaFlight, Inc.*, 26 S.W.3d 627, 631 (Tenn. Ct. App. 2000) (enforceable absent fraud or similar circumstances). Since we have held that the Repurchase Act does not apply to recreational boats, it follows that the Act does not void the contractual provision that chooses South Carolina law and restricts any litigation concerning the Agreement to South Carolina, or a federal district court in South Carolina.

V.

The final order of dismissal without prejudice by the trial court is affirmed. Costs on appeal are taxed to the appellants, Tennessee River Collection Yacht Sales, LLC., and TRC Watersports Center, LLC. This case is remanded, pursuant to applicable law, for collection of costs assessed below.

CHARLES D. SUSANO, JR., JUDGE